

# COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

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## STATE BAR, JUDICIAL SYSTEM PLAN LAW AND COURT OBSERVANCE WEEK

The Alabama State Bar and the Alabama Judicial System have joined together to sponsor a statewide Law and Court Observance Week April 25-May 1, 1982.

An extension of the traditional



*STEERING COMMITTEE...Chairman Ralph Cook, Vice Chairman Melinda Mitchell*

Law Day celebration on May 1, Law and Court Observance Week will feature many activities and programs designed to educate and inform Alabama citizens on the role of law in society, legal processes and the judicial system.

A steering committee composed of representatives of the bar, the media and the judicial system met Oct. 30 to adopt guidelines and discuss proposals for the weeklong celebration of law and justice.

The project will encourage community participation across the state through the leadership of local judicial officials and employees and local bar associations through their Law Day committees. The project outline, as approved by the steering committee, suggests the establishment of Local Community Advisory Committees which may include representatives of law enforcement, district attorneys, city and county governments, school systems, civic organizations, citizen action groups and media as well as members of

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*THE LAW AND COURT OBSERVANCE WEEK STEERING COMMITTEE...members pictured above met Oct. 30 to adopt guidelines and discuss plans for project. Representatives from judicial system, bar and media serve on steering committee.*

## STATE BAR, JUDICIAL SYSTEM PLAN LAW AND COURT OBSERVANCE WEEK

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the local bar associations and court systems.

The Administrative Office of Courts will act as primary staff support to the steering and local advisory committees and will concentrate its efforts on developing and distributing materials and ideas for activities and programs to increase the public awareness of law to the advisory committees and the media.

"Once the local committee chairman has been named, we will send a package of materials which will include ideas for law awareness activities and programs which can be implemented in communities across the state," said Bessemer Circuit Judge Ralph Cook who is chairman of the steering committee. "Some of the ideas we plan to propose include speakers bureaus, law fairs, open court days, mock trials, Law Day runs, senior citizen programs and student activities and projects such as essay and bulletin board contests. We also plan to distribute information on programs which have proven successful in some areas of the state such as the Montgomery Law Awareness Program, citizen neighborhood crime watch programs, Youth Judiciary and Court Visitation Programs," Cook added.

Cook explained that the main objective of this joint venture is to involve citizens in law awareness and develop ways to encourage their participation in the legal process, crime prevention and in essence, good citizenship.

Melinda Mitchell, a Birmingham attorney and formerly legal counsel for the Administrative Office, is state Law Day chairman for the bar and is vice chairman of the joint steering committee.

Packages of materials and ideas for Law and Court Observance Week will be mailed to community Law Day chairpersons and judicial officials in December, explained Project Coordinator Peggy D. Walker, courts planner for the Administrative Office. "We propose that community advisory committees be formed in January and that planning then begin for the local observance," she said.

"We will also be contacting educators and state media outlets in January, as well as various civic and service organizations to solicit their support and cooperation in making Law and Court Observance Week in Alabama a great success," Walker added.

"I sincerely hope that each judicial official and employee will take a leadership role in this project in his or her own community," said Chief Justice C.C. Torbert Jr. Administrative Director of Courts Allen L. Tapley pointed out that there are numerous projects and activities proposed under this project in which each employee and official can undertake and/or participate.

"We hope to gain a strong following, through the leadership of the judicial system and the bar, from members of the entire criminal justice community and citizens across the state," Tapley added.

Members of the steering committee, in addition to Cook and Ms. Mitchell, are Justice Richard L. Jones, Supreme Court; Judge William M. Bowen, Court of Criminal Appeals; Judge Robert E.L. Key, 35th Circuit; Judge Joseph Phelps, 15th Circuit; Judge S.A. Watson, 23rd Circuit; Judge Farrell McKelvey, Wilcox County; Judge Patti Smith, Shelby County; Judge Jerry Fielding, Talladega County; Judge Jerry Batts, city of Ardmore; Clerk Sam Grice, Talladega County; Clerk Maurice Castle, Mobile County; Register Barbara Pippin, Calhoun County; District Attorney Earl Morgan, 10th Circuit; Student Bar Association Presidents Kathy Marine (University of Alabama) and John Thrower (Cumberland); Judge George Carpenter, Colbert County; Attorneys David Broome, Mobile; James Gaines, John W. Harrison, Huntsville; Jim Wilson, James Byram Jr., Montgomery; J. Foy Guin, Tuscaloosa; J. Thomas King, J. Mark White, Birmingham; J. Gorman Houston, Eufaula; Glenn E. Thompson, Hartselle; and media representatives Skip Haley, WSFA-TV, Montgomery; Jim Jacobson, Birmingham News; and Skip Hinton, Alabama Public Television, Tuscaloosa. Exofficio members include Torbert, Tapley, Bar President Harold Hughston and Bar Executive Director Reginald T. Hamner. Walker, Robert A. Martin, Robert Taylor, Julie Young and Karan Sims and Thelma Braswell will serve as support staff to the project.

## JUDICIAL STUDY COMMISSION PLANS NOVEMBER ANNUAL MEETING; TWO NEW STUDY TOPICS SET ON MEET AGENDA

Alabama's Judicial Study Commission will meet in Tuscaloosa Nov. 20 for its annual winter meeting.

To be held at the new Law Center on the University of Alabama campus, the meeting will bring together its 32 members to study several matters of concern to the state's courts and the judicial system. Scheduled for discussion are several matters carried over from the commission's 1980 meeting, three juvenile matters and two new subjects--restructure of the Alabama appellate courts and the need for a new state Judicial Building.

Following its studies and discussions, the Judicial Study Commission makes recommendations to the governor and legislature and compiles a legislative package under its sponsorship to be introduced at the following session of the legislature.

The commission is comprised of 32 members, representing all levels of the state judiciary, both houses of the legislature, the offices of the governor and attorney general and the Alabama State Bar. The advisory section of the commission is comprised of representatives of the circuit clerks, district attorneys and law enforcement officials. Chief Justice C.C. Torbert Jr. is chairman and Rep. Rick Manley, speaker pro tem of the House of Representatives, is vice chairman. Jack Dixon of the Administrative Office of Courts is director.

At the Nov. 20 meeting, two new members will join the commission: Broox Garrett, a Brewton attorney and vice president of the State Bar, who replaces retiring Bar President E.T. Brown; and Robert H. Harris, a Decatur attorney, who replaces Lynwood Smith. Smith, a former Huntsville attorney, was recently appointed to the Huntsville judiciary.

University of Alabama Law School Dean Allen E. Smith and Louisiana Supreme Court Justice James L. Dennis will address the study commission's upcoming meeting. Justice Dennis is a nationally-recognized authority on appellate courts and the variety of their structure and jurisdiction

among the various states.

The Judicial Study Commission is a deliberative body charged by statute to continuously study the state's courts and judicial system and the general administration of justice in Alabama and to report its findings to the governor and the legislature. Of the study commission's 1980 legislative package, five bills were passed. Matters concerned were: juvenile justice (repeal of the "Super Miranda" provision); elimination of challenge of jurors over age 65; a bill allowing investment of the clerks and registers supernumerary fund; a bill allowing a judge or district attorney to dismiss a criminal case on payment of costs; and a bill concerning "not guilty because of insanity" cases.

## GOVERNOR JAMES APPOINTS GROUP TO STUDY CRIME PROBLEM IN ALABAMA

Alabama Governor Fob James' recently appointed Commission on Crime has scheduled five public hearings in four cities across the state in the next two months.

The commission was organized to study the problem of crime in Alabama and is headed by Montgomery Circuit Judge Joseph D. Phelps. Judge Phelps said the commission will hold public hearings in Montgomery Nov. 12-13; Mobile Nov. 23-24; Birmingham Nov. 30-Dec. 1; Florence Dec. 17-18; and again in Montgomery Dec. 28-29.

The first day of the Montgomery hearing, to be held at the Civic Center, will be devoted to testimony from state and local governmental leaders. Citizens are invited to make comments before the commission on the second day of the hearings.

Gov. James has urged the commission to study the state's criminal laws, determine any necessary changes and recommend action to eliminate technicalities which might be utilized to let those convicted of violent or serious offenses go free.

The commission will serve until next Jan. 31. Its findings will be based on the members' own conclusions as well as on the testimony it hears. The commission is expected to make its recommendations to the governor and the legislature during the regular legislative session in

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## GOVERNOR JAMES APPOINTS GROUP TO STUDY CRIME PROBLEM IN ALABAMA

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1982.

Members of the commission are: Circuit Judges Phelps, Cain Kennedy of Mobile and Robert E.L. Key of Evergreen; District Judge Patti Smith of Shelby County; District Attorney Tom Sorrells of Dothan; Attorneys Ed Hardin of Birmingham, Delores Boyd of Montgomery and Manson Murray of Mobile; Police Chief Ron Dunson of Opelika; Sheriff Brice Paul of Coffee County; Principal Clarence Mitchell of West End High School in Birmingham; Businessmen Buddy Riley of Montgomery and Lonnie Flippo of Florence; Montgomery City Councilwoman Alice Reynolds; Gadsden Realtor Wayne Owen; Montgomery Supermarket Official Tom Calendar; Caswell McCurdy of Lowndes County and Ed Sherling of Enterprise.

Among those invited to provide the commission a broad perspective on the problems and needs of the criminal justice system in dealing with crime are: Chief Justice C.C. Torbert Jr., Attorney General Charles Graddick, Prison Commissioner Joe Hopper, Securities Commission Director Tom Krebs, Pardon and Paroles Director Ealon Lambert and Director of Youth Services George Phyfer.

In addition, local judges, prosecutors, probation officers, law enforcement officers, attorneys, prison officials and interested citizens will be invited to testify before the commission.

### SUPPLEMENTAL CLASSROOM MATERIALS

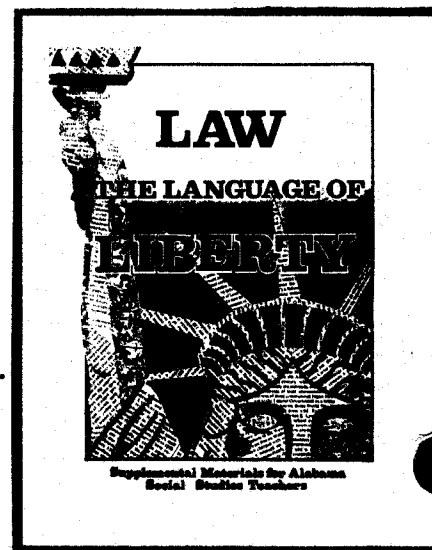
#### ON LAW AND COURTS BEING MAILED

For the past year, court system officials, teachers and school administrators have been involved in a cooperative effort to produce supplemental materials for social studies instruction on the law and the courts. This endeavor resulted in the formulation of a resource packet for grades K-12, entitled Law, The Language of Liberty. The packets, different for each grade level, contain materials and teacher-developed activities which coorelate with state-adopted curriculums for

each level. The packets do, however, provide the state's teachers with resource materials and specific information about Alabama's legal heritage, laws and court system which is unavailable through other organized means.

The resource packets have been printed and are presently being mailed to public schools in the state. Social studies department chairmen will receive and distribute the packets in junior high and high schools while principals will handle the distribution to elementary teachers.

The overall concept of the project is to help young people gain an understanding as well as a greater respect and appreciation for the necessity of laws and regulations in society. Operating under that concept, the general information and activities in each of the elementary packets



MATERIALS PACKET COVER

deal with such ideas as defining rules, distinguishing between rules (or laws) and customs, recognizing the need to have different rules in different places, realizing that rules help people and communities, and understanding that everyone must follow rules and laws. Some activities that help relate these ideas are charts, work sheets, flash cards and word games.

As the students progress through junior and senior high school, the materials in the supplemental packets coordinate more directly with their social studies curriculum. Specific information on Alabama's court system, juvenile proceedings and the relationship between state and federal courts are a few of the subjects covered in the eighth grade packet. The ninth grade packet contains resource information on such subjects as the changes that have occurred within Alabama's court system and a history of Alabama's prison system.

On the 12th grade level, the students  
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# NEWS FROM THE JUDICIAL COLLEGE



## CLERKS, REGISTERS AND EMPLOYEES

### STUDY ACCOUNTING PROCEDURES

Alabama court clerks, registers and employees of their offices met in Montgomery Oct. 15-16 for Session I of Accounting Procedures for Clerks and Registers Offices sponsored by the Alabama Judicial College. Of the 90 clerk offices in the state, 64 were represented at the conference through 126 attendees.

Faculty consisting of clerks, registers, employees, examiners of public accounts and Administrative Office of Courts staff reviewed various accounting procedures, pointing out changes in procedures resulting from recent legislation, and discussed developing technologies in the court system which impact accounting procedures.

Among those addressing the conference was Dent Richards, southeast Alabama district supervisor for the Department of Examiners of Public Accounts, who discussed "How To Make An 'A' On An Audit."



DENT RICHARDS

"Run a good office and keep a good set of records," Richards told the group as the primary formula for making an "A" on an audit.

Richards, having worked with the department for 17 years, noted that a common misconception is that accounting records are maintained for the auditor. "Accounting records are NOT maintained for the auditor. The accounting records are kept for the accumulation of data as well as to adequately account for cash flow and responsibility. An auditor can audit any set of properly kept books. Your accounting system," he told the court clerks, "should be so organized and posted that if everyone in the clerk's office, including the clerk, were to quit tonight, someone with a knowledge of the court system should be able to walk into the office Monday morning, take a look at the records and



EMPLOYEES OF CLERKS AND REGISTERS OFFICES ...attended Accounting Procedures Conference in Montgomery.

begin operating the office without any difficulties."

State and county offices are, by law, to be audited every two years and a complete "court audit," Richards says, can involve as many as 15 separate office audits.

Considerations for accommodating an examiner making an audit of the office should be proximity of records to be examined; private room with natural light, if possible; room away from traffic and noise areas; large desk or table.

Richards gave clerks some pointers concerning some of the most common problems his department encounters:

1. Keep and balance with the cash and all primary amounts at the end of each month and especially at year end.
2. Be sure to fully explain and cross-reference all adjustments to the cash account. If there is a note, it should be clearly stated.
3. Keep cash on hand daily and balance it with the total of receipts. Richards said, "If you are not sure of the total, recall and correct on a daily basis."
4. Make all deposits timely and intact.
5. Identify on the back of the receipt the amount of the deposit.
6. Reconcile all bank account balances to the cash account.
7. Do not rely on the use of unofficial

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## SUPPLEMENTAL CLASSROOM MATERIALS

*(Continued From Page 4)*

are once again exposed to the structure and jurisdiction of the courts and to juvenile proceedings, but in a more detailed manner. Some other subjects covered in this packet are small claims court, jury duty and consumer protection laws. Case studies and mock trials for civil and criminal proceedings are included as suggested activities.

Other general information contained in most of the packets is a resource list for inviting classroom speakers. Judges, district attorneys, attorneys, clerks of court, sheriffs and policemen are named as suggestions.

The mail-out of the materials should be completed by mid-December. For further information concerning this project, contact Julie Young at the Administrative Office of Courts.

## CLERKS, REGISTERS AND EMPLOYEES

## STUDY ACCOUNTING PROCEDURES

*(Continued From Page 5)***receipts**

8. Write receipts immediately upon acceptance of money, mailed in ~~envelopes~~ ~~separately~~.

**checks**

10. Prepare an organizational chart of your office and list the duties of each slot. This, he said, will aid you in improving internal control, setting salary brackets, recognizing weak, overworked or underworked areas, planning for the expansion of your office and will give an overall view of how your office operates.

The second session of Accounting Procedures for Clerks and Registers Offices which will deal with other aspects of procedures is scheduled in Birmingham on March 25 and 26, 1982.

## JUROR CALL-IN SYSTEMS UPDATE

Juror telephone answering systems have now been installed in all circuits requesting them. Presently, there are 38

systems in operation with another circuit being targeted. A positive response has been received from courts utilizing these systems. Any circuit interested in a call-in system should contact Randy Helms at the Administrative Office of Courts.

TWELFTH CIRCUIT ACHIEVES LOW COST  
PER TRIAL THROUGH JUMI PROGRAM

Through the combined efforts of Presiding Circuit Judge Riley Greene, Circuit Judge Terry Butts and Circuit Clerk Bill Stone, the 12th Judicial Circuit (Pike County) has achieved an outstanding low \$195 cost per trial. The 12th Circuit recently completed participation in the Juror Utilization/Management Incentive Program. The goal established by the JUMI program is \$400 or less per trial. The 12th Circuit's low jury trial cost came during the September jury term.

LEAVE ACCOUNTING CARDS DUE TO  
AOC BY LAST DECEMBER PAY PERIOD

In late October, the Personnel Division mailed the 1982 leave accounting cards and payroll calendars to administrator's offices.

Although the 1981 leave cards are not due to be returned to the Personnel Division until the last full pay period in December (which ends December 22), now is a good time to check the cards of each employee to see that the posting is up to date and that leave forms have been filled out for all leave taken. This may help to avoid a last minute crunch at the end of the year.

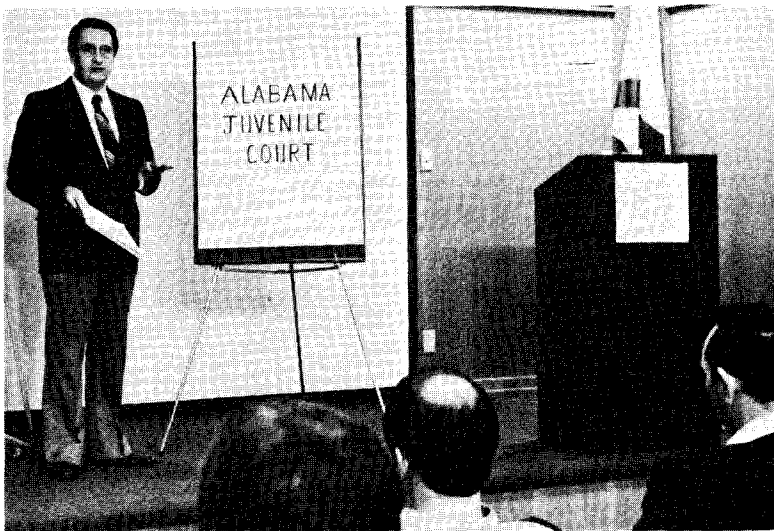
Questions about leave accounting and requests for additional forms may be addressed to Ginny Anderson, Barbara Erickson or Linda Price in the Administrative Office Personnel Division.

## COURT CLERK TESTING DATES SET

Written tests for court clerks will be administered: Dec. 5, Tuscaloosa; Dec. 12, Gadsden and Florence; Dec. 19, Birmingham, Alexander City, Montgomery and Mobile.

Clerks and registers who are anticipating vacancies or promotions should have those interested contact Personnel Division.





*MORGAN COUNTY DISTRICT JUDGE...C. Bennett McRae, who handles juvenile court in Morgan County, addresses law enforcement officers concerning the juvenile court.*

#### WESTLAW COMPUTERIZED LEGAL RESEARCH TO BE AVAILABLE TO STATE'S JUDGES

In the near future, the Alabama Supreme Court and the Administrative Office of Courts plan to have available to the state's appellate, circuit and district judges computer-assisted legal research capability offered by West Publishing Company and known as Westlaw. This service is similar to other programs such as the commercial service known as LEXIS and JURIS, the service utilized by the federal courts and U.S. attorneys.

When installed, the Westlaw terminal, composed of IBM equipment, will be located in the Supreme Court library and operated by a full-time legally-trained employee. Properly framed legal problems fed into the system will have access to myriad data bases, e.g., U.S. Code, federal reporters, state and regional reporters and certain administrative data such as tax material. Regarding Alabama, the reporters which can be accessed are the Supreme Court Reporter, Court of Civil Appeals and Court of Criminal Appeals. Full text plus synopses and headnotes will be available from 1967 to date and headnotes only from 1956 to 1967. Immediate Shepardizing will be available.

The Westlaw equipment has been demonstrated at several judicial conferences. More information will be forthcoming as plans for the Westlaw project finalize.

#### JUVENILE COURT SEMINAR HELPS LAW ENFORCEMENT OFFICERS IN UNDERSTANDING LAWS, PROCEDURES

Once each year, for the past four years, Morgan County District Judge C. Bennett McRae leads a Juvenile Court seminar especially for law enforcement officials.

Through the seminars, Judge McRae brings the officers up-to-date on juvenile law and procedures and explains the processes involved in the juvenile court process.

Judge McRae, who handles the juvenile court jurisdiction in Morgan County, is assisted in the presentations by Chief Juvenile Probation Officer Mervyn Michael.

The latest of the seminars was on Oct. 1, of this year with 85 state, county and municipal law enforcement officials attending. Two two-hour sessions allowed all law enforcement officers the opportunity to hear the judge and probation officer talk about juveniles and the laws and processes by which they are governed during judicial proceedings.

"It is imperative that law enforcement officials have a thorough understanding of juvenile law and procedure," Judge McRae said. "Without their interest and support, the juvenile court becomes less effective in dealing with juvenile defendants."

During the past four years, Judge McRae has also presented a Juvenile Court Seminar to state troopers at the Criminal Justice Training Center in Selma.



*CIRCUIT JUDGES...Bill Thompson (center) of Birmingham and Joe Colquitt (right) of Tuscaloosa watch as Mike Goodson of West Publishing demonstrates Westlaw terminal.*

# PEOPLE \* PEOPLE

**A**fter 30 years of service with the Tuscaloosa County courts, *Eleanor Hartranft* retired in early October from the Tuscaloosa County District Clerk Office.

In 1951, Mrs. Hartranft went to work in the circuit clerk office. She later worked for the Inferior Court, which was changed to Tuscaloosa County Court before becoming the present district court.

She explained that although the court's name changed several times and her office location changed six times, the work she performed remained virtually the same.

Her retirement plans include spending more time with her husband, Harold, her two children and her three grandchildren. She also plans to revive a high school interest by taking a course in drama and do a bit of traveling.

**S**ue A. Bell, a recent graduate of the University of Alabama Law School, has been appointed to fill a district judgeship in Conecuh County which has been vacant for several years.

**A**dministrative Director of Courts *Allen L. Tapley* recently addressed Kansas judges at their annual conference on "Public Affairs for the Judiciary." Tapley was invited to address the conference following a similar presentation he, Chief Justice C.C. Torbert Jr. and Director of Administrative Service Robert A. Martin made to the Conference of Chief Justices and Conference of State Court Administrators at their joint meeting in Boca Raton, Florida this past summer.

**S**ince legislation was passed in 1978 removing exemptions for persons to be called for jury duty, several of the state's judges, including the chief justice, have been summoned for jury duty. But, as far as the Administrative Office of Courts is aware, only one judge, Judge *William Sullivan* of Talladega, has actually served on a jury. He was chosen to serve on a civil jury in August and asked a visiting judge to replace him at the bench.

**M**ary T. (Susie) McCord, Mobile County Jury Commission clerk and her husband Gary are parents of Michael Lee born Oct. 19.

**T**he Alabama Judicial College welcomes *Jeannie Nix* to its Tuscaloosa staff as administrative assistant to Director Thelma Braswell. Previously Ms. Nix worked as a court management analyst on the jury and case management projects at the Administrative Office of Courts in Montgomery. Kathleen Andrews, formerly holding the administrative assistant position, has returned to the University of Alabama to pursue a Masters degree.

**W**anda Janes recently assumed the position of secretary to Escambia County District Judge Earnest White. She was working in the Escambia County Clerk Office prior to her move to the district court. She replaces *Frances Johnson* who is now chief clerk in the Monroe County Clerk Office.

**C**ircuit Judge *Cain J. Kennedy* of the 13th Judicial Circuit (Mobile) recently completed two weeks active duty with the U.S. Navy Military Sealift Command in Bremerhaven, West Germany. Kennedy, a Reserve Naval officer has a mobilization billet as Staff Judge Advocate, Commander Military Sealift Command, Europe. In a national emergency, Kennedy would be recalled to active duty to serve in that billet in West Germany. The Military Sealift Command is a high priority naval organization responsible for the movement of all military supplies and equipment by sea.

**C**ourt News has recently learned of the death of Utah Supreme Court Chief Justice *Richard J. Maughan* who died July 8. Chief Justice Maughan had served on Utah's high court for six years. Justice *Gordon R. Hall* was sworn in to replace Maughan on July 13.

**D**eborah Hay of the AOC staff has been Delected secretary of the Alabama Society of Archivists.



# PEOPLE \* PEOPLE



LAURA COFFEY

**C**herokee County Register *Laura F. Coffey* has retired from her position with the circuit court after 17 years of service.

Mrs. Coffey retired Sept 30. She was appointed to the position of register in 1965 by Circuit Judge Jack Livingston of the 9th Judicial Circuit.

She and her husband, Bill, live at Yellow Creek Falls on Weiss Lake and have two daughters and two grandchildren.

"This office is like home to me and I will miss all the wonderful people that I have worked with in the 9th Circuit," Mrs. Coffey said about her retirement, "but I am looking forward to staying home and enjoying my two grandsons."

By law, the office of register is abolished upon the retirement or resignation of the present register. Mrs. Coffey's duties will be assumed by the office of circuit clerk in Cherokee County headed by Circuit Clerk Jerry "Pete" Trammell.

**J**efferson County District Judge *James C. Manning* died of an apparent heart attack Nov. 1 at Brookwood Hospital in Birmingham.

Judge of the district court since 1977, Manning was appointed judge of the general sessions court in 1975. Prior to his appointment, he was an attorney for St. Paul Insurance Company.

The 67-year-old judge is survived by his wife, Rubye; a daughter, Donna Putman; a brother, Jake Manning; and two grandchildren.

The Jefferson County Judicial Nominating Commission will provide three names for the governor's consideration in filling the vacant judicial post.

**M**ontgomery County District Clerk *Walter Graham* retired from his position Oct. 31 and a longtime employee of the district clerk's office, Jewel Ryals, was appoint-



JEWEL E. RYALS

ed to fill the position.

Mrs. Ryals served as deputy clerk until she was appointed district clerk by Administrative Director of Courts Allen L. Tapley.

Mrs. Ryals has worked with the judicial system for 22 years. She is a native of Montgomery and has two children.



CHARLES Y. CAMERON

**C**harles Y. "Chuck" Cameron, who served as state court administrator and administrative director of courts in Alabama from 1971-77, died Nov. 8 in Houston, Texas.

Cameron, 51, died after a two-year battle with cancer. He left Alabama to become court administrator for the courts in Houston (Harris County). He had also served as law clerk for former Chief Justice Ed Livingston and law clerk and administrative assistant to former Chief Justice Howell Heflin.

A native of Birmingham, Cameron was buried in Elmwood Cemetery. He is survived by his mother and his wife, Carol.

Chief Justice C.C. Torbert Jr. and Heflin praised Cameron for his dedicated work during the period when the Alabama Judicial System was being reorganized in the mid 1970s. It was during this period that both the Judicial Article and its implementing legislation effected great changes in the state courts and a businesslike administrative structure for the courts was being set in place.

## REPORT PREDICTS ALABAMA PRISON POPULATION FOR THE YEAR 1986

In a report published in August of this year, Dr. Chester I. Palmer of the Center for Government and Public Affairs at the Montgomery branch of Auburn University predicts that prison population in Alabama will be between 8,060 and 11,400 inmates by October 1, 1986.

The report, prepared with assistance from the Alabama Criminal Justice Information Center and Dr. William E. Osterhoff of the Department of Justice and Public Safety of Auburn University at Montgomery, is reprinted here for the information of Court News' readers.

"In making a projection of prison population for October 1, 1986, we have faced the problem of incomplete and often contradictory data. For example, for a recent one-year period the total number of prisoners computed from intake and release data differs from actual prison population data by more than 10 percent. Complex prediction methods such as multiple regression and intake-outflow models are very sensitive even to small inaccuracies in the data, and also require data over a longer time period than is available. We have therefore adopted simpler, less sensitive methods. But in view of the problems with the data on which these projections are based, it would be a serious error to place too much faith in the results.

"Past attempts in various jurisdictions to predict prison populations have been notoriously inaccurate. Trends often change in response to forces outside the criminal justice system. All projection methods are based on historical records, and changes in law or in the social consensus as to who should be imprisoned can make nonsense of any prediction. Nevertheless, some projections are necessary for planning purposes. We therefore record our best estimates below. We based one set of projections on the demographics of the Alabama male population as related to the current probability of incarceration for a male of given race and age. Since less than five percent of Alabama state prisoners are women, we have not attempted to study the demographics of the female population; instead, we have

used the same proportional changes that are expected for the male population.

"We used demographic projections made by the Center for Business and Economic Research at the University of Alabama, which we modified in accordance with preliminary 1980 census data on age and racial composition of the current population. When weighted by the probabilities of incarceration by race and age, we estimate a 16 percent increase in risk factors over five calendar years. When applied to the current base of about 6,921 prisoners (August 1, 1981), the resulting projections would be for 7,700 male prisoners and 360 female prisoners, for a total of 8,060. This projection should be considered a lower bound since prison population has recently been increasing much more rapidly than would be expected from demographic factors alone.

"A second type of projection is based only on past prison population trends. The earliest fiscal year for which we have reliable data is 1977-78. During the following two years, male prison population showed an annual rate of increase of 2.8 percent, closely in agreement with the demographics of the general population. In fiscal year 1980-81, however, through August 1 the annual rate of increase is 21 percent. This rate clearly cannot be sustained indefinitely, but it is difficult to predict when it will end since we do not understand the reasons for the sudden change in rate of growth. (Arrests for major crimes show no comparable increase, nor are there obvious changes in sentencing patterns.) Another lower bound projection could be obtained by projecting the historic 2.8 percent growth rate onto the present base, giving estimates of 7,650 males, 360 females, for a total of 8,010--in close agreement with the prediction from overall population demographics. If the current year rate of increase is projected through October 1, 1986, the result is an estimate of a total prison population of 18,900, which seems clearly too high. A more realistic assumption would be that the current rate of increase of 21 percent will decline linearly over the next three years to the demographic rate of 3.2 percent, leading to a projection of 10,450. If the rate undergoes a similar decline

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## REPORT PREDICTS ALABAMA PRISON POPULATION IN THE YEAR 1986

(Continued From Page 10)

in two years, the result would be 9,650; over four years, 11,400. Since a four year period represents a complete political cycle, there seems little reason to project that current effects beyond demographics will operate over any longer period.

"Nationally, the most accurate predictions of prison populations seem to come from capacity-based models. We have not adopted such a model because important aspects of the model seem not to agree with experiences in Alabama, notably the national two year lag period before increased capacity affects the system. Moreover, capacity models applied to state jurisdictions lead to predictions of discontinuous increases in population which are extremely sensitive to exact dates of construction. However, a rough estimate from the national model without the time lag as applied to current planned prison expansion in Alabama would give a lower bound estimate of about 9,600, in reasonable agreement with the models in the last paragraph.

"There have been a number of recent changes in the Alabama legal system which will eventually affect the prison population; for example, the new 'good time' law, the revised criminal code, and the new provisions for habitual offenders. It is too early for empirical data to be available on these effects, but it seems likely that they will be small compared with the effect of different periods of phase out for the current elevated growth rate."

### Summary of Projections Prison Population on October 1, 1986

Reasonable...	Male	Female	Total
Lower Bound	7,700	360	8,060
Estimate	9,550	450	10,000
Upper Bound	10,890	510	11,400

## MILEAGE DEATH RATE IN ALABAMA DROPPED BELOW NATIONAL AVERAGE

"Statistically, driving in Alabama has become safer during the past two years," said Col. Jerry Shoemaker, director of the Alabama Department of Public Safety. "The most recent Accident Facts, a publication of the National Safety Council, shows that the mileage death rate in Alabama during 1980 has dropped below the national average."

The mileage death rate is the number of traffic deaths for each 100,000,000 vehicle miles. It is calculated using information from gasoline sales and vehicle mile per gallon averages.

Alabama had 618 rural traffic deaths and 329 urban traffic deaths in 1980 for preliminary mileage death rate of 3.2 which is below the national average of 3.5. Final figures of the National Safety Council for 1979 show Alabama with a mileage death rate of 3.4 compared with the national average of 3.5. During 1979, there were 683 rural traffic deaths and 337 urban traffic deaths.

The past two years showed a significant change from 1978 during which Alabama had 822 rural traffic deaths and 347 urban traffic deaths. Alabama's mileage death rate in 1978 was 3.9 as compared with the national average of 3.3.

"What all these numbers mean to us is that fewer people are dying on Alabama's highways," Shoemaker said. "It shows that concern for safe driving is growing and that drivers in Alabama are doing their part to prevent deadly traffic accidents."

"The Department of Public Safety is dedicated to the protection of life and property and has been working toward safer highways since 1935," he said. "Statistics like these from the National Safety Council tell us that we are on the right track in Alabama."

## FROM OCT. 1 BIRMINGHAM NEWS:

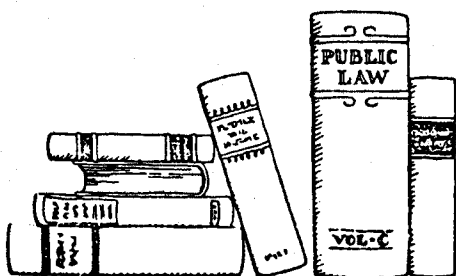
### Marriage on trial

Civic duty can sometimes be troublesome, as jurors in Jefferson County Circuit Court found out Monday.

When jurors were being selected for the trial of Danny Ray Williams for murder, at about 5 p.m. lawyer Pete Johnson asked if any of the jurors had ever been divorced.

"I will be if you don't let us out of here pretty soon," responded one.

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

Felony Warrants ReturnableTo District Court

In an opinion issued Sept. 15, 1981, the attorney general determined that felony warrants issued by a magistrate are properly made returnable to the district court.

This opinion noted that the district court has preliminary jurisdiction in felony cases where an indictment has not yet been returned, although the district court does not have final jurisdiction in the sense that it could not hold a felony trial on the merits.

In reading Sections 12-11-30(2), 12-12-32(b)(1) and 12-12-32(b)(2) together, the opinion concludes that the preliminary jurisdiction of the district court attaches when it issues the felony warrant and extends through preliminary hearing over which the district court has exclusive jurisdiction. Thus, if probable cause is found, the district court must bind the defendant over to the circuit court to await grand jury action with the notable exception of a guilty plea to a felony not punishable by death.

Acceptance Of Cash BondsIs Clerk's Responsibility

On Sept. 25, 1981, the attorney general issued the following opinion which concluded that it is the responsibility of the circuit clerk to collect and hold

money for cash bonds:

"The Attorney General's Office is in receipt of your request for an opinion dated Sept. 8, 1981, in which you posed the following question:

"Your opinion is requested in regard to the approval and collection of money on cash bonds on persons released from the county jail. Is it the duty of the sheriff or the circuit clerk of the county?

"It is my understanding that it is the duty of the sheriff of the county since he approves the bonds. However, it has been a practice over the years for the clerk of the circuit court to collect and hold the money for these bonds until the cases are disposed of."

"Code of Alabama 1975, Section 15-13-40, provides:

"At anytime after an order admitting him to bail, a defendant, instead of giving bail, may deposit with the clerk of court in which he is held to answer the sum mentioned in the order; and, upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody."

"The acceptance of cash bonds is the responsibility of the clerk and in order to facilitate the handling of cash bonds, the clerk should establish a procedure providing for the receipt of cash and the deposit thereof.

"It is therefore the opinion of the attorney general that upon an order admitting a defendant to bail, the defendant should deposit the applicable sum with the clerk of the appropriate court and the sheriff must release the defendant from custody."

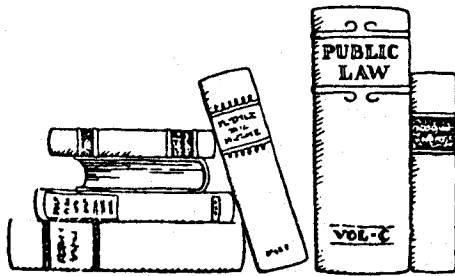
District Attorney's Fund--Travel Expenses

On Sept. 15, 1981, the attorney general released an opinion regarding whether district attorneys and their employees may receive travel expenses from the District Attorney's Fund in excess of the maximum state per diem travel allowance.

Reference was made to an earlier attorney general opinion dated Aug. 12, 1971, which held that a district attorney is only entitled to state per diem for in-

(Continued On Page 13)

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

(Continued From Page 12)

state travel. However, District Attorney's Fund legislation allows reasonable and necessary expenses to be incurred by the district attorneys and their employees for law enforcement purposes. Section 12-17-19 provides for the District Attorney's Fund in circuits where there is no local law or general law of local application, for the use of district attorneys in discharging their duties.

Subsection (c) of Section 12-17-197(c) states:

"The district attorney of each judicial circuit, as defined in subsection (a) of this section, is hereby authorized to requisition expenditures from the district attorney's fund for the payment of any and all expenses to be incurred by him for law enforcement and in the discharge of the duties of his office, as he sees fit. The treasurer of each county in each judicial circuit, as defined in subsection (a) of this section, shall pay out of said funds to the said district attorney upon requisition made to the treasurer by the district attorney."

The attorney general held that the above provision was authority for district attorneys and their employees to receive from the District Attorney's Fund of their particular circuit an amount for in-state travel expense in excess of the per diem allowance provided by the state treasurer under Section 36-7-20, Code of Alabama 1975. Such travel allowance can certainly be included in any and all expenses in-

curred by the district attorney for law enforcement and in the discharge of the duties of his office.

### Cases Dismissed Upon Payment Of Costs

"You have asked the opinion of this office regarding the following matter:

"In the event a case is dismissed conditioned upon payment of costs pursuant to Act 81-353, would the additional costs prescribed in Act 81-864 be applicable?"

"It is the opinion of this office that when a case is dismissed upon payment of costs pursuant to Act 81-353, such costs must include the additional amounts prescribed by Act 81-864.

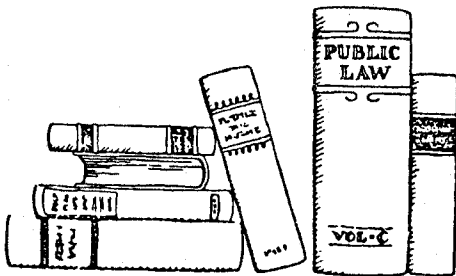
"Act No. 81-353, 1981 Regular Session, approved April 29, 1981 (amending Code of Alabama 1975, Section 12-19-150) provides that before docket fees and other court costs are assessed against a criminal defendant, he must first be convicted of the crime with which he has been charged. The Act creates an exception to this rule, however: a judge may, in the exercise of his discretion, dismiss the case against the criminal defendant and "such order may be conditioned upon the defendant's payment of the docket fee and other court costs accruing in the proceeding." About a month later, the legislature passed the Act which is the basis of your question. Act No. 81-864, 1981 Regular Session, approved May 28, 1981, provides for additional court costs to be charged in certain criminal or quasi-criminal cases in the district or circuit courts. Section 1 of the Act provides that the additional costs be collected in each case 'where the defendant is adjudged guilty or pleads guilty.'

"Since Act 81-864 does not address the situation where the case has been dismissed, your question is whether these additional costs can be assessed where a case has been dismissed upon payment of costs pursuant to Act 81-353.

"Clearly, the underlying goal in interpreting state statutes is to find and effectuate the intent of the legislature. The Employees' Retirement System of Alabama v. Head, 369 So. 2d 1227 (Ala. 1979). We believe that by enacting Act 81-353, our state lawmakers intended that the

(Continued On Page 14)

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 13)*

judge have the authority to assess any costs upon dismissal that are permitted in the event of conviction. This, of course, would include the additional costs set out in 81-864. For this reason, we conclude that a judge must assess the costs prescribed by Act 81-864 when he dismisses a case upon payment of costs."

Juveniles--Juvenile Delinquents

--Traffic Offenses

Due to the volume of inquiries submitted to the Administrative Office of Courts regarding the appropriate procedures to be followed with regard to traffic offenses committed by those defined by law as "juveniles," the following questions were submitted to the attorney general:

"(1) When a child 16 years of age or older is convicted in the adult traffic court, may the appropriate records be forwarded to the Department of Public Safety?;

"(2) When, however, a traffic case is either transferred to the juvenile court and adjudication is handled in that court or original jurisdiction is exercised by the juvenile court because the defendant is under the age of 16, should records of the disposition be forwarded to the Department of Public Safety?; and

"(3) When may a juvenile, whether within the jurisdiction of the juvenile,

municipal or district court, be detained or incarcerated in an adult jail on a traffic offense?"

The opinion answering these inquiries was released on Oct. 20, 1981, and answers to these inquiries were as follows:

"(1) When a child 16 years of age or older is convicted of a traffic offense in either a municipal or district court, the child's record may be forwarded to the Department of Public Safety.

"(2) When a traffic case is transferred to the juvenile court, the crime ceases to be a "traffic offense" and becomes an act of juvenile delinquency within the meaning of the juvenile statutes. Thus, Section 12-15-101 does not authorize disclosure to the Department of Public Safety without an order from the juvenile court and this would apply regardless of the age of the child; and

"(3) Section 12-15-61 should be interpreted to mean that unless a juvenile is certified as an adult to the circuit court, he must be detained in a juvenile detention facility for all alleged criminal offenses, including traffic violations. Thus, on an underlying traffic offense charge a juvenile, whether in juvenile, municipal or district court, may be placed in an adult facility only if: (a) no other facility is available, (b) the child is detained in a room separate and removed from all contact with adult inmates, (c) adequate supervision is provided, and (d) the facility is approved by the Department of Youth Services. See Section 12-15-61(b), Code of Alabama 1975."

Due to the importance of this opinion, copies of the full text are being circulated to court officials.

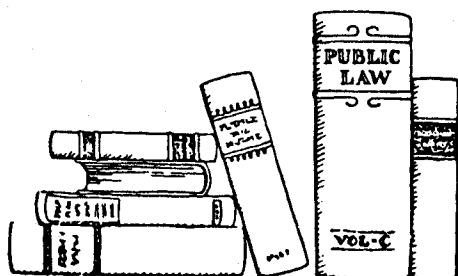
Newspapers--Legal Notices--Publications

In an opinion dated Sept. 15, 1981, the attorney general was asked to interpret the meaning of the provision within Section 6-8-60 of the Code which states that in order to qualify to publish legal notices, a newspaper "shall have been mailed under the second class mailing privilege of the United States Postal Service from the post office where it is published for at least 51 weeks a year."

*(Continued On Page 15)*



## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 14)*

After reviewing the statutory predecessor of Section 6-8-60, the attorney general held that under the requirements of this section, a newspaper must have been in operation for 51 weeks prior to the publication date of a legal notice before it can qualify as a proper medium for legal advertisements.

The opinion went on to construe Section 6-8-60 in light of a local act applicable to St. Clair County which had deleted the requirement that a newspaper be mailed under the second class mailing privilege. The attorney general opined that unless existing local legislation explicitly eliminates the time requirements (which the local act under consideration failed to do), the prior operation of a newspaper for the 51-week period is a general mandatory requirement.

Police Officers--Arrest

The attorney general was recently asked to render an opinion detailing the exact circumstances under which police officers could arrest persons for trespassing in a trailer park. This specific question arose when the owner of a trailer park posted signs denying access to non-residents entering his park after certain hours. Limiting his opinion to the facts presented, the attorney general held that, except in instances where police officers actually witness the trespass, they can arrest persons for tres-

passing only after obtaining a warrant from a court of competent jurisdiction. This holding was based on the general rule which restricts warrantless arrests to misdemeanors committed "within the officer's presence."

Youthful Offender Adjudication Records

Not Subject To Sealing/Destruction Orders

In an opinion dated Sept. 16, 1981, and issued to Jefferson County Sheriff Melvin Bailey, the attorney general has concluded that an order for the sealing and/or destruction of a juvenile's record(s) issued pursuant to Section 12-15-103, Code of Alabama 1975, may not include records of youthful offender adjudications.

In the fact situation considered by the attorney general, the Jefferson County Sheriff's Office inquired as to whether a pistol permit could be denied a subject who had been "adjudicated" a youthful offender on an underlying charge of grand larceny, but whose record had been sealed under an order issued pursuant to Section 12-15-103, supra.

Quoting from the opinion, the attorney general stated:

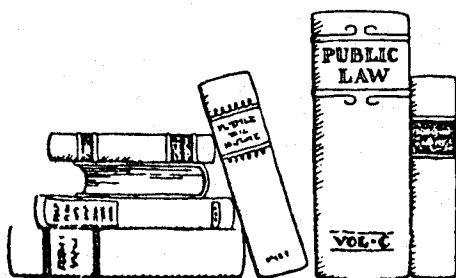
"...It is the opinion of this office that a youthful offender adjudication is not a record or document included within Section 12-15-100 or 12-15-101 and may not be sealed or destroyed pursuant to Section 12-15-103.

"Further, Section 15-19-7 clearly requires that such records be maintained since it requires that prior youthful offender adjudications be considered if the youthful offender is subsequently convicted of a crime. It is thus the opinion of this office that an order issued pursuant to Section 12-15-103 would not include

youthful offender adjudication records and that such records must be considered by the sheriff in determining whether to issue a pistol permit." (Pursuant to Sections 13A-11-70 and 13A-1172(a)).

*(Continued On Page 16)*

## LEGAL NOTES



## SUPREME COURT RULES

Search The Record Rule Amended/Rule 45(B)

Effective Jan. 1, 1982, the Alabama Rules of Appellate Procedure are amended by adding Rule 45(B):

"Rule 45(B)--SCOPE OF REVIEW IN CASES OTHER THAN DEATH CASES In all cases appealed to the Court of Criminal Appeals, except those in which the death penalty has been imposed, the Court of Criminal Appeals shall consider only questions or issues presented in briefs on appeal.

"Footnote: This rule modifies Code of Alabama Section 12-12-240 by; abolishing the procedural requirement that the Court of Criminal Appeals search the record for errors not raised on appeal."

## MISCELLANEOUS LEGAL NOTES

Docket Fees For Offenses Of "No Tag,""Improper Tag," "Operating VehicleWithout Current Plate Or Decal"

Recently, the Fiscal and Legal Divisions of the Administrative Office of Courts were asked to clarify confusion as to the appropriate docket fee for cases filed pursuant to Section 32-6-65(b), Code of Alabama 1975, Operating a Motor Vehicle Without Current License Plate or Decal. Specifically, the inquiries asked whether the appropriate docket fee is that of a traffic infraction since offenses under this section, *supra*, are apparently most often made out on a UTC; or wheth-

er they should carry a misdemeanor docket fee.

As in the past, the Administrative Office wishes to state that its opinions are not the equivalent of an attorney general's opinion. However, after researching this inquiry and having the following opinion confirmed by the Department of Examiners of Public Accounts, the Administrative Office holds the position that the appropriate docket fee for these cases is the misdemeanor docket fee rather than the docket fee established for traffic infractions.

This position is based, in part, upon the rationale that this offense is a revenue violation, the same as those earlier listed by the attorney general as being revenue violations. Those particular offenses (which were former Title 36 offenses) are now Sections 32-6-51, 32-6-52, 32-6-53 and 32-6-131. Violations of Sections 32-6-51 and 32-6-52 are probably most commonly referred to as the violations of "no tag" and "improper tag," respectively. In an opinion reported in 1977, the attorney general opined that violations of these particular sections are not traffic infractions and specifically, by their own provisions, constitute misdemeanor offenses.

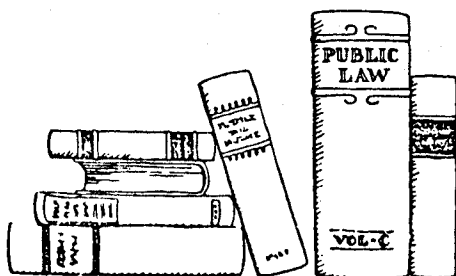
Additionally, the attorney general opined at that time that these offenses do not require the use of a UTC, although there was no indication that use of the UTC for these offenses is improper.

Unlike Sections 32-6-51, 52, 53 and 131, the provisions of Section 32-6-65(b), *supra*, Operating a Vehicle Without Current Tag, Decal, etc., do not specifically provide that this is a misdemeanor offense. However, there is specifically imposed a \$25 minimum fine which fits within the range established for Class C misdemeanors and this opinion considers that the punishment is therefore "specified" within the meaning of Section 13A-5-4, Code of Alabama 1975; thus proscribing the definition of this offense as a violation.

In summary, the Administrative Office concludes that regardless of the method(s) of initiating the offenses listed in Sections 32-6-51, 32-6-52, 32-6-53, 32-6-131 and 32-6-65(b), Code of Alabama 1975, the

*(Continued On Page 17)*

## LEGAL NOTES



## MISCELLANEOUS LEGAL NOTES

(Continued From Page 16)

appropriate docket fee is the misdemeanor docket fee rather than the docket fee established for traffic infractions.

## NOTES FROM THE APPELLATE BENCH

The Supreme Court of Alabama opened its new term on Oct. 5. Some of the issues argued before the Court during October included:

Whether a covenant not to compete was void. (80-337, Dock Reed and Highland Racquet Club)

Whether a products liability suit was time-barred by the special statute of limitations for product liability actions (Section 6-5-502) because the injury causing event happened more than ten years after the manufactured product was put to use. (80-459, Lankford)

Whether a computer program is tangible, personal property, which is subject to conversion. (80-400, National Surety Corp.)

Whether the trial court properly applied the provisions of the new law relating to sales for division involving tenants in common. (80-422, Scott Paper Co.)

Whether a person's failure to obtain a license under the mini-code affects the debtor's obligation under the loan contract. (Certified question from U.S. Dis-

trict Court. Derico)

Whether legislative act which authorized a different procedure for nighttime searches in certain circuits was a denial of equal protection of the law because the procedure is different from that authorized under a general law. (80-369, State v DeMent)

Whether legislature, by resolution, could provide an expense allowance for the lieutenant governor of \$1,500 per month. (80-185, Gunter v Beasley)

Whether police officers, discharged by their superior, should have been given a de novo hearing in circuit court, as provided for by a local act. (80-405, Ex parte City of Florence)

Whether Jefferson Circuit Court had in personam jurisdiction over a foreign corporation (England) in a wrongful death action involving deaths occurring on a project being constructed in South Carolina. (80-678, Birmingham Steel Corp.)

Whether a complaint which alleges a wrongful discharge of an employee under an employment at will contract states a cause of action, or whether such a complaint is subject to summary dismissal. (80-418, Meredith v. Pollution Control)

Whether a roadway across a vacant lot is a "structure" so as to violate a restrictive covenant against structures other than those residential in nature. (80-347, L.W., Inc.)

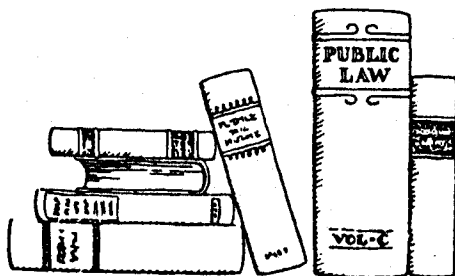
Whether a cemetery plot of one acre devised by will was abandoned or whether persons claiming ownership of the plot could move the cemetery to expand a business. (80-93, Boyd v Brabham)

Whether a cause of action against a manufacturer of an intrauterine device could be sued more than eight years after the date of the injury, because the manufacturer "fraudulently" concealed the defect. (80-244, Miller v A.H. Robbins)

Whether an indictment which charges an "escape from BT Sheriff. . . , the person having him in custody" is sufficient to charge an offense for "escape from the penitentiary or from any person or guard having him in charge under authority of

(Continued On Page 18)

## LEGAL NOTES



## NOTES FROM THE APPELLATE BENCH

*(Continued From Page 17)*

law." (80-497, Ellison)

Whether, in the absence of a written rejection, minimum uninsured motorist coverage is implied in every automobile policy. (80-668, Ex parte Potete)

Whether punitive damages may be recovered when an action for fraud is based upon a misrepresentation of a material fact made "recklessly without knowledge." (80-638, Lewis v Treadwell Ford)

Whether a natural father is entitled to custody of his child, as against third persons, where it has not been estaglished that he is unfit by clear and convincing evidence. (80-581, Ex parte Berryhill)

Whether a mortgagor who sues for specific performance of a contract made by mortgagee to relinquish the right of redemption can also, under a power of sale, foreclose the mortgage. (80-605, Cedarwood Associates)

Whether an action filed under the provisions of the Workmen's Compensation laws against a third-party tortfeasor by a dependant of a workman for the death of the workman survives to the personal representative of the dependant, or is any action for the workman's wrongful death only available to the personal representative of the deceased workman. (80-481, Braxton v Dixie Electric)

Whether a buyer of land who obtained a

favorable jury verdict in his suit on the contract is entitled to specific performance of the contract. (79-782, Herring)

Whether a promise of permanent employment is supported by a promise by a prospective employee that she would leave her present employment in exchange for the promise of permanent employment. (80-476, Scott v Lane)

Whether an employee of a state agency can be held liable individually for an alleged negligent act on her part while performing her duties as an employee. (80-431, DeStafney v University of Alabama)

Whether a surety on a payment bond who pays suppliers has priority over an assignee bank to contract funds. (Fidelity and Casualty Co. v Central Bank)

Whether a release signed by a personal injury claimant in a products liability action applied only to the potential defendant named in the release or was a general release because of language in the document that it released "all claims, several or otherwise, part, present or future, which can or may be asserted by any person or persons, etc." (Conley v Curtis Machine Co.)

Whether a widow's suit for loss of her husband's services, sanity and consortium, and the cost of caring for him between injury and death, was maintainable. (80-428, Baird v Spradlin)

Whether a city can be held liable for a failure to inspect or for an alleged negligent inspection. (80-455, Reid v City of Mobile)

Whether a local act as enacted was substantially changed from bill which wasn't advertised locally. (80-178, Adam v Shelby County Commission)

Whether the widow's separate estate statute (Section 43-5-3) share of personalty statute (Section 43-3-10) and share of realty statute (Section 43-5-2) contain gender-based classifications which are unconstitutional. (80-401, Barger v Barger)

Whether a daughter who is guardian of her incompetent mother, the widow of the testator, can dissent on behalf of her

*(Continued On Page 19)*

## NOTES FROM THE APPELLATE BENCH

(Continued From Page 18)

mother from the will, and whether she showed it was in the best interest of her mother to do so. (80-477, First Alabama Bank v Coker)

Whether a default judgment should have been set aside. (80-543, The Hen House)

### PROCEDURES OUTLINED IN CASES WHERE DEFENDANT FAILS TO PAY COURT COSTS

In answer to several questions which have arisen recently concerning the procedure to be followed when a defendant in a criminal action fails to pay court costs, temporary Rule 10 of the Alabama Rules of Criminal Procedure (ARCrP) outlines who is responsible and the actions to be taken in this situation.

The first question concerning a case wherein the defendant is found guilty and placed on probation contingent on the payment of costs or allowed to make partial payment concerns the disposition of the case. For the purpose of CRS reporting to the Administrative Office of Courts, a case is considered disposed of once the judge issues a final order. ~~For the purposes of financial accountability in the clerk's office, a case should not be filed as disposed until all costs are collected or until another order is issued by the judge waiving the unpaid costs.~~ This will require special record keeping procedures in the clerk's office and a special filing system should be established to handle a type of "accounts receivable."

The second question arises concerning the procedure to follow when a defendant fails to pay the prescribed court costs. This procedure is contingent on "to whom the payment is to be made." Section (d) of temporary Rule 10 ARCrP covers the procedure when the clerk is to collect the payments. If the defendant is NOT on probation and fails "to pay a fine, restitution, or any installment thereof within the prescribed time, the clerk shall notify the district attorney and the court." If the defendant IS on probation and fails "to pay a fine, restitution, or any installment thereof within the pre-

scribed time, the clerk shall give notice of such delinquency to his probation officer." Section (d) also covers the procedure when the payment is to be made to someone other than the clerk. Regardless of whether the defendant is on probation, if the payment is to be made to someone other than the clerk, "the person to whom the payment shall be made shall notify the probation officer or the court of the defendant's failure to pay."

Once these notifications are made, it is the responsibility of the court and the district attorney to follow Sections (e), (f), (g), (h) and (i) of temporary Rule 10 ARCrP to invoke further actions to collect court costs.

### ETHICS COMMISSION ON GIFT RECEIVING

The Alabama Ethics Commission has reminded all state officials and employees who come under the Ethics Law of its guidelines pertaining to the acceptance of gifts.

Section 36-25-6, Code of Alabama 1975, concerning officials and employees other than those of regulatory agencies: "No person shall offer to or give to a public official or employee or his family, and none of the aforementioned shall solicit or receive anything of value, including a gift, favor or service or a promise of future employment, based on any understanding that the vote, official actions, decisions, or judgment of the intended recipient or family member would be influenced thereby. Expenses associated with social occasions afforded public officials and employees shall not be deemed a thing of value within the meaning of this section or prohibited hereby."

Section 36-25-12, Code, concerns officials and employees of regulatory agencies: "No person shall offer or give to a member or employee of a governmental agency, board or commission that regulates a business with which such person is associated, and no member or employee of a governmental regulatory agency, board or commission shall solicit or accept from any such person anything of value including a promise of future employment or a favor or service while the member or employee is associated with the regulatory agency, board or commission. However, expenses associated with social entertainment afforded members and employees shall not be deemed a thing of value within the meaning of this section."



## COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

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